

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

ROBERT EASTMAN

PLAINTIFF

VS.

CIVIL ACTION NO. 5:10cv168-DCB-JMR

MISSISSIPPI VALLEY SILICA CO.

DEFENDANT

COLUMBIA CASUALTY COMPANY

GARNISHEE-DEFENDANT

PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Plaintiff, by and through undersigned counsel and files this Response to Garnishee-Defendant Columbia Casualty Company's Motion for Summary Judgment and would show unto the Court the following in support thereof:

1. The Defendant filed its Motion for Summary Judgment on or about December 10, 2010. Along with the Motion for Summary Judgment, the Defendant submitted a self serving affidavit from Jerry Alpine who is the alleged claims director for Continental Casualty Company.

2. Under the doctrine of *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, federal courts sitting in diversity apply state substantive law and federal procedural law. Therefore, this Court is required to apply the substantive law of Mississippi to this garnishment action against Columbia Casualty Company.

3. On December 20, 2010, the Plaintiff served its first set of Interrogatories, Requests for Production, and Requests for Admissions to the Columbia Casualty Company. The time for responding to these discovery requests has yet to run.

4. Without this discovery, the Plaintiff is unable to form a response to Defendant's Motion for Summary Judgment as the discovery in this matter has not been completed.

5. Pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, the Plaintiff respectfully requests this Court to order a continuance of Defendant's Motion for Summary Judgment to allow discovery to be conducted in this matter and possibly allow depositions if the discovery shows them to be necessary. In support of this request, counsel for Plaintiff has attached an affidavit as Exhibit "A".

WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully requests this Court to order a continuance of Defendant's Motion for Summary Judgment.

DATED, this the 22nd day of December, 2010.

Respectfully submitted,

ROBERT EASTMAN, PLAINTIFF

By: s/ John T. Givens
JOHN T. GIVENS, *Attorney for Plaintiff*

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CERTIFICATE OF SERVICE

I, John T. Givens, the undersigned counsel for Plaintiff, do hereby certify that I have this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing of such to all counsel of record.

I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

NONE

This, the 22nd day of December, 2010.

s/John T. Givens
JOHN T. GIVENS